

September 20, 2015

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Stephanie A. Joyce

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Re: WC Docket No. 12-375, Response to *Ex Parte* Filings of Praeses, LLC and Martha Wright, et al.

Dear Secretary:

Securus Technologies, Inc. (“Securus”) hereby responds to the recent filings by Praeses, LLC (“Praeses”) (posted September 10, 2015) and the Martha Wright Petitioners (“Wright Petitioners”) (posted September 14, 2015).¹ More specifically, Securus responds to these parties’ assertions regarding site commissions.

Since May 2014, Securus has been bringing the conduct of Praeses to the Commission’s attention.² Other Inmate Calling Services (“ICS”) providers have done so as well.³ The two most important facts about Praeses are: (1) it is not an ICS provider; (2) it is paid based on how much site commission revenue it obtains for its correctional authority clients, sometimes as high

¹ The Wright Petitioners Letter is dated September 8, 2015, but was “resubmitted” on September 11, 2015, possibly due to the planned outage of the ECFS system.

² WC Docket No. 12-375, Letter from Stephanie A. Joyce, Counsel to Securus, to Julie Veach, Chief, Wireline Competition Bureau (July 31, 2014) (“July 31 *ex parte*”); Letter from Stephanie A. Joyce, Counsel to Securus, to Julie Veach, Chief, Wireline Competition Bureau (July 30, 2014) (“July 30 *ex parte*”); Letter from Stephanie A. Joyce, Counsel to Securus, to Marlene H. Dortch, FCC (May 15, 2014) (“May 15 *ex parte*”).

³ E.g., WC Docket No. 12-375, Letter from Marcus W. Trathen, Counsel to Pay Tel Communications, Inc., to Marlene H. Dortch, FCC, Attachment at 1-6 (July 8, 2015) (“ICS Industry Practices – ‘Workarounds’ to Restrictions on Site Commissions”); Letter from Cherie R. Kiser, Counsel to Global Tel*Link Corp., to Marlene H. Dortch, FCC (Nov. 20, 2014) (“GTL Letter”).

as 33.3% of all site commissions paid to facilities.⁴ Praeses' entire business model depends on the site commission model that exists today, whereby site commissions of up to 94% can be demanded from ICS providers.⁵ The higher the amount of the site commission, the more money Praeses makes. Praeses does not care that its percentage of site commissions artificially inflates the calling rates for inmates and their friends and families. If site commissions go away, Praeses will have a bankrupt business model, so it is highly motivated to keep site commissions at the highest possible level.

With that factual background in mind, it is no wonder that Praeses instructs the Commission to “refrain from attempting to prohibit site commissions”⁶ and to “[r]efrain from [a]ttempting to [r]egulate [s]ite [c]ommissions.”⁷ Praeses also warns the Commission that the “cost recovery mechanism” now under consideration carries “administrative and jurisdictional challenges”⁸ that would make the forthcoming rules “vulnerable to a judicial appeal.”⁹ These “challenges” include Praeses' curious belief that the proposed per-minute, additive cost recovery method would result in “abusive cross-subsidization by Providers.”¹⁰ It is puzzling how such a mechanism, whereby ICS carriers would collect a per-minute additive rate on billable calls and remit the full amount to the resident correctional authority, could enable a carrier to subsidize *anything*. The funds would never be the property of the carrier. And the per-minute calling rate would be based on the carrier's demonstrated costs of providing secure calling service — the costs that were reported to the Commission in July 2014.

⁴ Global Tel*Link has submitted evidence showing that Praeses receives 10-12% of the site commission money it generates, and gets a 33.3% cut of the “historical reconciliation” it garners for purportedly past-due site commission amounts. GTL Letter at 1-2 (summarizing Praeses contracts with several counties including Marin County, CA and El Dorado County, CA). Praeses has never disputed that it receives a portion of the site commission money that ICS providers pay to the correctional authorities for which Praeses is a consultant. *See* WC Docket No. 12-375, Comments of Praeses LLC at 3 n.3 (Jan. 12, 2015).

⁵ WC Docket No. 12-375, *Ex Parte* Presentation of Michael Hamden, Ex. 4 (June 24, 2015) (scoring sheet from bidding process conducted by Arizona Department of Corrections in 2015). The providers' proposed site commissions were allocated 1500 of a possible 1800 points. *Id.*

⁶ Praeses Letter at 4.

⁷ *Id.* at 5.

⁸ *Id.* at 4.

⁹ *Id.* at 7.

¹⁰ *Id.* at 5.

Praeses' purported concern about the additive rate proposal is thus wholly unfounded. Moreover, and contrary to Praeses broad-brush, uncited assertion,¹¹ a majority of the ICS Industry¹² as well as the National Sheriffs' Association support this per-minute, additive rate proposal as an appropriate means of reimbursing facilities for the costs they incur to make ICS available.¹³

Securus has submitted in the record its correspondence with Praeses which demonstrates the pressure that Praeses exerts in order to maximize site commission funds for correctional facilities. The Attachment to the Securus May 15 *ex parte* includes the following:

On behalf of Sarasota County Sheriff's Office, Emerald Companies and Monterey County Sheriff's Office, Praeses is submitting the following compensation adjustments for your review.

- Sarasota – 0% commission on interstate Gross Revenue; 65.5% commission on all Gross Revenue less interstate.
- Emerald
 - Option 1 – 0% commission on all Gross Revenue; transition to a Recovered Expense by Inmate approach with the following amounts:
 - LaSalle - \$50.03 per inmate per month
 - Rolling Plains - \$62.66 per inmate per month
 - San Luis - \$14.59 per inmate per month
 - West Texas - \$ 25.96 per inmate per month
 - Option 2 – 0% commission on all Gross Revenue; transition to a Recovered Expense by Inmate Telephone Station approach with the following amounts:
 - LaSalle - \$123.53 per station per month
 - Rolling Plains - \$488.36 per station per month
 - San Luis - \$95.31 per station per month
 - West Texas - \$178.10 per station per month

With any of these options (per customer), we would need to ensure we apply the method going back to the February 2014 traffic month and true-up as necessary.

¹¹ Praeses Letter at 4 (“almost all Facilities, and several Providers disfavor the implementation by the Commission of a discrete regulatory mechanism for recovery by Facilities of their ICS costs”).

¹² WC Docket No. 12-375, Letter from Securus, Global Tel*Link Corp., and Telmate, LLC to Chairman Wheeler and Commissioners Clyburn, Rosenworcel, Pai, and O’Rielly at 3 (Sept. 15, 2014) (“ICS Industry Proposal”). These three carriers together “represented 85% of the industry revenue in 2013[.]” *Id.* at 1.

¹³ WC Docket No. 12-375, Letter from National Sheriffs’ Association to Marlene H. Dortch, FCC, at 4-5 (June 12, 2015). The “NSA represents thousands of sheriffs, deputies and other law enforcement, public safety professionals, and concerned citizens nationwide.” See NSA Website, available at <http://www.sheriffs.org/content/about-nsa>.

This type of activity is, as the Wright Petitioners also recognize, the cause of inflated ICS rates.¹⁴ Skyrocketing site commissions put the burden of jail operation and maintenance onto the friends and family of inmates.

The Wright Petitioners are mistaken, however, in asserting that ICS providers somehow enjoy being subject to Praeses' tactics.¹⁵ To the contrary, Securus has lamented to the Commission that "ICS providers faced a great deal of pressure to continue paying site commissions on interstate calls in contravention of the new rules," and that "[a]ny lack of clarity in the forthcoming rules as to whether and how site commissions may be paid and recovered will increase that pressure tremendously, and likely will result in higher rates to end users."¹⁶ Securus's message has been simple: "If site commissions are appropriate, tell the industry how they can be provided and to what degree. Put all carriers on a level playing field and make them subject to the same set of clear, strictly enforced rules."¹⁷ This plea is not, contrary to the Wright Petitioners' barbs, asking for "an easy out."¹⁸ This plea is exactly in keeping with the Commission's goal of ensuring competition on the merits in the ICS industry rather than the "reverse competition" that percentage-based and unchecked site commissions have engendered.¹⁹

The Wright Petitioners are also mistaken in asserting that the rates in the ICS Industry Proposal "are substantially higher than the cost of providing service."²⁰ The proposal is \$0.20 per minute for debit/prepaid calls and \$0.24 for collect calls. The publicly reported average, per-minute costs in this industry are:

¹⁴ Wright Petitioners Letter at 5 ("the costs of these agreements have been paid for by ICS consumers").

¹⁵ "The record is rich in examples of how ICS providers have bent over backwards to sign contracts promising high commissions and other in-kind contributions." Wright Petitioners Letter at 5.

¹⁶ WC Docket No. 12-375, Letter from Stephanie A. Joyce, Counsel to Securus, to Chairman Wheeler and Commissioners Clyburn, Rosenworcel, Pai, and O'Rielly at 6 (Feb. 18, 2015) ("Securus February 18 Letter").

¹⁷ *Id.* at 7 (emphasis in original).

¹⁸ Wright Petitioners Letter at 5.

¹⁹ WC Docket No. 12-375, *Rates for Interstate Inmate Calling Services*, Second Further Notice of Proposed Rulemaking, FCC 14-158 ¶ 3 (rel. Oct. 22, 2014).

²⁰ Wright Petitioners Letter at 4.

Carrier	Final, Average, Per-Minute ICS Cost
Global Tel*Link	\$0.1341
Pay Tel	\$0.1967
Securus	\$0.1776
Telmate	\$0.1583

As the Commission required, these per-minute cost figures exclude the cost of site commission payments. The Wright Petitioners' attempts to discredit these figures have been proven incorrect. In a word, their economists' analysis of Securus's cost data was unreliable.²¹

What the Commission wants to adopt are "backstop" rate caps as part of a "market-based solution."²² These rate caps must be set *above* carriers' average costs. Setting rate caps *at* average cost immediately puts ICS service at half of a carrier's sites below cost. Such below-cost rates cannot be saved with increased call volume: "If each minute of service is priced below average cost, increased demand simply means that every minute of service is below cost."²³ Indeed, with regard to the current Interim Rate Caps, FTI Consulting concluded that Securus enjoyed only a modest 15.5% increase in call volume, and that "any further reduction in rates will result in additional loss of revenue, meaning that Securus WILL NOT recover the costs identified in the FTI Cost Report."²⁴

Because the ICS Industry Proposal is set so close to carriers' average, per-minute ICS costs, whatever cost recovery mechanism the Commission adopts for correctional facilities must be an

²¹ WC Docket No. 12-375; Letter from Stephanie A. Joyce, Counsel to Securus, to Marlene H. Dortch, FCC, at 2-4 (Aug. 21, 2015); Response to Second Further Notice Declaration of Coleman Bazelon and Expert Report of Don J. Wood, FTI Consulting, Inc., at 4 (Jan. 27, 2015) (appended to Reply Comments of Securus Technologies, Inc. (Jan. 27, 2015)).

²² Second FNPRM ¶ 47.

²³ Securus January 12 Comments at 16.

²⁴ WC Docket No. 12-375, FTI Consulting, Inc., Report on Price Elasticity of Demand for Interstate Inmate Calling Services on Behalf of Securus Technologies, Inc. at 21 (Jan. 12, 2015) (appended to Securus January 12 Comments) (Public Version).

additive to that calling rate.²⁵ That additive rate, as stated above, would be collected on behalf of the resident correctional facility and remitted in full to that facility; allegations that this per-minute, additive rate would constitute a “windfall” for ICS providers or be used to “cross-subsidize” service are ludicrous.

For all these reasons, the positions set forth in the Praeses Letter and Wright Petitioners Letter are unsound. They rest on flawed, disproven assumptions about the ICS industry and they are contrary to record evidence. Moreover, the zeal with which these parties advocate drastically below-cost calling rates (Wright Petitioners) and the preservation of usurious site commissions (Praeses) suggests an incentive that is more punitive than it is rational.

Please let me know if you need any further information from Securus. Thank you for your consideration.

Sincerely,

s/Stephanie A. Joyce

Counsel to Securus Technologies, Inc.

cc: Daniel Alvarez, Legal Advisor to Chairman Wheeler
Rebekah Goodheart, Legal Advisor to Commissioner Clyburn
Pamela Arluk, Acting Chief, Pricing Policy Division, Wireline Competition Bureau
Lynne Engledow, Acting Deputy Chief, Pricing Policy Division, Wireline Competition Bureau
Madeleine Findley, Acting Deputy Chief, Pricing Policy Division, Wireline Competition Bureau
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Rhonda Lien, Pricing Policy Division, Wireline Competition Bureau
Bakari Middleton, Wireline Competition Bureau
Gil Strobel, Wireline Competition Bureau
(All via electronic mail)

²⁵ E.g., Securus January 27 Reply Comments at 4; Securus February 18 Letter at 6; WC Docket No. 12-375, Letter from Cherie R. Kiser, Counsel to Global Tel*Corp., to Marlene H. Dortch at 2 (Mar. 25, 2015) (“need for continued recovery of correctional facilities legitimate ICS-related costs through an admin-support payment collected and remitted based on a per-minute of use rate that is separate but part of the backstop ICS rate caps”).